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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JAN 14 1993

IN RE APPLICATIONS OF:

MARTIN W. HOFFMAN,
TRUSTEE IN BANKRUPTCY

For Renewal of Licenses of
Station WHCT-TV, Hartford, Connecticut,
in bankruptcy under Chapter 7,
Case No. 88-21124 RLK

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

File No.

BRCT-881201LG

To: The Commission

January 13, 1993

TRUSTEE'S OBJECTION TO SHURBERG BROADCASTING'S
PETITION TO DISMISS APPLICATION

Martin W. Hoffman, Chapter 7 Trustee for the bankruptcy estate of Astroline Communications Company, Limited Partnership, Case No. 88-21124, objects to Shurberg Broadcasting of Hartford's Petition to Dismiss Application on the grounds that (1) Shurberg Broadcasting, a/k/a Alan Shurberg, lacks standing to file a petition to deny the Trustee's applications for license renewal, and that (2) Shurberg Broadcasting has not set forth sufficient allegations of fact showing that a grant of the applications would be prima facie inconsistent with the public interest, convenience and necessity pursuant to 47 U.S.C. § 309(d)(1).

STATEMENT OF FACTS

1. On October 31, 1988, an involuntary Chapter 7 Petition was filed against Astroline Communications Company Limited Partnership (hereinafter referred to as the "Debtor"), an entity which owned and operated a Hartford based television station known as Channel 18 WHCT with its principal place of business located at 18 Garden Street, Hartford, CT.

2. On December 1, 1988, the case was converted to a voluntary Chapter 11 proceeding.

3. On April 4, 1991, the case was converted to a voluntary Chapter 7 proceeding.

4. On the same day, April 4, 1991, Martin W. Hoffman (hereinafter referred to as "Trustee") was appointed Trustee of the Chapter 7 Estate.

5. Pursuant to 11 U.S.C. § 541, the Trustee holds two private operational fixed microwave radio station licenses: Call Sign WNER693-60 Washington Street, Hartford, CT and Call Sign WNER694-18 Garden Street, Hartford, CT (hereinafter referred to as "licenses").

6. On or about May 4, 1992, the Trustee filed applications for renewal of these licenses with the FCC.

7. The two licenses are predominantly the major asset of the bankruptcy estate since the tangible assets, i.e. the television station at 18 Garden Street, equipment, etc., are currently in the possession of secured creditors.

8. The Commission has, on three occasions to date, granted the Trustee's requests for special temporary authority to remain dark pursuant to Section 73.1740 of the Commission's Rules until April 17, 1992. On March 24, 1992, the Trustee requested another extension until July 17, 1992 and on June 26, 1992, the Trustee also requested a further extension for authority to remain dark until November 4, 1992. On October 9, 1992, the Trustee requested a further extension of authority to remain dark until January 15, 1993.

9. On or about December 28, 1992, the Trustee requested a further extension from the Commission for authority to remain dark until April 15, 1993.

10. On or about December 14, 1992, Shurberg Broadcasting of Hartford (hereinafter referred to as "SBH") filed a Petition to Dismiss Application (which is to be construed as a Petition to Deny) against the Trustee. SBH (a/k/a Alan Shurberg) is a creditor of the bankruptcy estate having filed a \$7,000,000.00 proof of claim against the estate for unfair business practices, fraud and discrimination.

11. At the present time, the Trustee is negotiating with several potential purchasers and with the secured creditors in possession of WHCT's physical assets for a sale of the Trustee's rights in the licence and the lease to the antenna located at 376 Deercliff Road, Avon, CT.

12. The Trustee believes that this sale will occur within a very short period of time.

ARGUMENT

1. Lack of Standing

Pursuant to 47 U.S.C. § 309(d), an entity has to be a "party in interest" in order to have standing to file a petition to deny. "Parties in interest" have been limited to those alleging economic injury, those alleging electronic interference, and those alleging to represent the public interest. See National Broadcasting Co. v. F.C.C., 362 F.2d 946 (U.S.App.D.C., 1966). SBH claims to have standing to file its petition to deny on the grounds that SBH is an applicant for a construction permit for a new television station to operate on Channel 18 in Hartford, and therefore SBH's application is mutually exclusive with the Trustee's applications for renewal. However, SBH is not a party in interest and has no standing to file its petition to deny

because it is not economically injured by the Trustee's applications and does not allege electronic interference or representation of the public interest.

Insofar as standing is based upon economic injury, SBH must show direct and immediate injury, not merely nominal or speculative injury. See WLVA, Inc., Lynchburg, VA., v. F.C.C., 459 F.2d 1286 (U.S.App.D.C., 1972). Any injury of SBH is nominal because the Trustee seeks to renew the licenses in order to assign them to a third party. Pursuant to 47 U.S.C. § 310(d), the Trustee is allowed to assign and transfer the television licenses "upon application to the commission and upon finding by the commission that the public interest, convenience, and necessity will be served thereby." Furthermore, "Any such application shall be disposed of as if the proposed transferee or assignee were making application under section 308 of this title for the permit or license in question; but in acting thereon the commission may not consider whether the public interest, convenience or necessity might be served by the transfer, assignment or disposal of the license to a person other than the proposed transferee or assignee." 47 U.S.C. § 310(d). Pursuant to bankruptcy law, whether the Trustee sells his rights in the licenses by

private sale or public auction, SBH as a creditor of the estate is entitled to notice of the sale and an opportunity to outbid any potential purchaser. See Fed. R. Bankr. Proc. 2002. Since SBH has the opportunity to purchase the Trustee's rights in the licenses, it suffers no direct economic injury by the renewal of the Trustee's licenses. Any economic injury would also be speculative since SBH is not guaranteed to obtain a new license for Channel 18 should the Trustee's applications for renewal of the licenses be denied. Pursuant to 47 U.S.C. 307, a licence is granted only if "public convenience, interest, or necessity will be served thereby."

2. Insufficient Allegations of Facts

If SBH does have standing to file its petition to deny, the petition should be dismissed because SBH has failed to allege sufficient facts to show that a grant of the application would be prima facie inconsistent with the public interest, convenience, and necessity pursuant to 47 U.S.C. § 309(d)(1). See Citizens for Jazz on WRVR, Inc. v. F.C.C., 755 F.2d 392 (U.S.App.D.C. 1985). In its petition to deny, SBH argues that since the Trustee no longer possesses the physical equipment of the television station and only retains the licences, it is impossible for the Trustee to put Channel 18

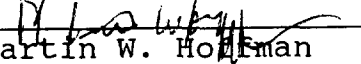
back on the air or sell the licenses to someone who could immediately return the station to operational status, and therefore the Trustee's Applications are inconsistent with the public interest, necessity and convenience in the earliest possible utilization of Channel 18. However, Petitioner SBH does not allege that SBH could bring Channel 18 back on the air faster than the method the Trustee is using. As mentioned previously, the Trustee is in negotiations with several potential purchasers and the secured creditors for a sale of the Trustee's rights in the licenses and the lease of the antenna located at 376 Deercliff Road, Avon, CT. There is no reason to assume that a successful purchaser would be unable to resume broadcasting in the shortest period of time. Therefore, the granting of the Trustee's applications to renew the licenses would not be inconsistent with public interest, necessity, and convenience.

Furthermore, it also appears that SBH has not filed an affidavit in support of its petition to deny as required by 47 U.S.C. § 309 and 47 CFR 73.3584, and therefore the petition should be dismissed.

CONCLUSION

In light of the above discussion, SBH's Petition to Dismiss Application should be dismissed because SBH lacks standing to file a petition to deny and has alleged insufficient facts to demonstrate that the granting of the Trustee's applications to renew licenses would be inconsistent with public interest, necessity and convenience.

TRUSTEE, MARTIN W.
HOFFMAN

By 
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Trustee
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FEDERAL COMMUNICATIONS COMMISSION
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MARTIN W. HOFFMAN,
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For Renewal of Licenses of
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To: The Commission

January 13, 1993

AFFIDAVIT

State of Connecticut)
)
County of Hartford)

ss: Hartford January 13, 1993

I, Martin w. Hoffman, being duly sworn, depose and say:

1. I am over the age of 18 and understand the meaning of
an oath.

2. On October 31, 1988, an involuntary Chapter 7 Petition
was filed against Astroline Communications Company Limited
Partnership (hereinafter referred to as the "Debtor"), an
entity which owned and operated a Hartford based television
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5. On the same day, April 4, 1991, I was appointed Trustee of the Chapter 7 Estate.

6. Pursuant to 11 U.S.C. § 541, the Trustee holds two private operational fixed microwave radio station licenses: Call Sign WNER693-60 Washington Street, Hartford, CT and Call Sign WNER694-18 Garden Street, Hartford, CT (hereinafter referred to as "licenses").

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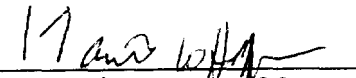
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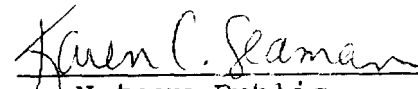
Trustee's rights in the licence and the lease to the antenna located at 376 Deercliff Road, Avon, CT.

13. The Trustee believes that this sale will occur within a very short period of time.



Martin W. Hoffman

SUBSCRIBED AND SWORN TO BEFORE ME THIS 13th DAY OF
JANUARY, 1993



Notary Public
Karen C. Seaman
My commission expires 4/30/97

CERTIFICATION

I hereby certify that a copy of the foregoing Objection and affidavit was mailed by first class mail, postage prepaid, on this 13th day of January, 1993 to the following:

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Martin W. Hoffman